United Nations E/C.19/2011/6

Economic and Social Council

Distr.: General
18 February 2011

Original: English

Permanent Forum on Indigenous Issues
Tenth session
New York, 16-27 May 2011
Item 7 of the provisional agenda*
Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Study on the status of implementation of the Chittagong Hill Tracts Accord of 1997

Submitted by the Special Rapporteur

Summary

At its ninth session in 2009, the Permanent Forum appointed Mr. Lars-Anders Baer, member of the Permanent Forum, as Special Rapporteur to undertake a study on the status of implementation of the Chittagong Hill Tracts Accord of 1997. The Rapporteur visited Bangladesh in September 2010 where he met with various Government officials, including the Minister for Foreign Affairs and the State Minister of the Ministry of Chittagong Hill Tracts Affairs. The Rapporteur would like to thank the Government of Bangladesh for extending its support for the study.

The present study assesses progress in the implementation of the major provisions of the Chittagong Hill Tracts Accord, which was signed on 2 December 1997 by the Government of Bangladesh and the indigenous political party, Parbatya Chattagram Jana Samhati Samiti, after 25 years of low-intensity guerrilla war waged in reaction to violations and suppression of the rights of indigenous peoples in that region of the country.

* E/C.19/2011/1.

11-23879 (E) 170311

Please recycle

Contents

		Page
I.	Introduction	1
II.	Background to the signing of the Chittagong Hill Tracts Accord	4
III.	International framework	5
	A. United Nations Declaration on the Rights of Indigenous Peoples	5
	B. International Labour Organization Convention No. 107	6
	C. Issues relating to the peaceful resolution of conflicts	6
	D. Violence and militarism	6
IV.	Chittagong Hill Tracts Accord	7
V.	Political commitment to the implementation of the Chittagong Hill Tracts Accord	8
VI.	Status of implementation of the main provisions of the Chittagong Hill Tracts Accord	8
	A. Tribal inhabited region	8
	B. Legislation	9
	C. Accord Implementation Committee	9
	D. Hill District Local Government Council/Hill District Council	9
	E. Chittagong Hill Tracts Regional Council	10
	F. Land	11
	G. Demilitarization	13
	H. Repatriation and rehabilitation of refugees and internally displaced persons	13
	I. Ministry of Chittagong Hill Tracts Affairs	14
VII.	Assessment of the implementation status of the Chittagong Hill Tracts Accord and the effects on the situation in the region	15
VIII.	Recommendations	17

I. Introduction

1. The Chittagong Hill Tracts is situated in southeastern Bangladesh and is home to 11 indigenous groups,[1] numbering approximately 500,000 people,[2] who differ markedly from the Bengali majority in language, culture, physical appearance, religion, dress, eating habits, architecture and farming methods. In 1976, the Shanti Bahinis the armed wing of the indigenous peoples' political party, Parbatya Chattagram Jana Samhati Samiti (PCJSS), initiated a low-intensity guerrilla war against the Government of Bangladesh in response to the erosion of their autonomy, the denial of constitutional recognition and their political, economic and social marginalization. In 1997, the Chittagong Hill Tracts Accord was signed between the Government of Bangladesh and PCJSS. The Accord recognizes the Chittagong Hill Tracts as a tribal inhabited region, acknowledges its traditional governance system and the role of its chiefs and provides building blocks for regional autonomy.

2. Thirteen years have passed since the signing of the Chittagong Hill Tracts Accord, yet many of its provisions remain unimplemented, or only partially implemented, including some critical clauses such as the settlement of land disputes, demilitarization and the devolution of authority to local institutions. The failure of successive Governments to fully implement the Accord has immense consequences for the indigenous peoples in the region, and it is therefore crucial that immediate and meaningful steps are taken to implement it, with the participation of the region's indigenous population.

3. As the model for an agreement that provides some form of indigenous autonomy, the Accord, including its implementation process, provides valuable lessons. The case of the Chittagong Hill Tracts is also important since it illustrates the challenges in implementing a peace treaty, and how delayed implementation can result in continued widespread human rights violations, violent conflicts and military control. For these reasons, at its ninth session, the Permanent Forum on Indigenous Issues appointed a Special Rapporteur, Mr. Lars-Anders Baer,[3] to prepare the present study, which is to be considered by the Forum at its tenth session.

4. The study presents the international framework dealing with indigenous peoples' rights and violent conflicts; the background for the signing of the Accord; an introduction to its main sections; the political commitment to its implementation; the status of implementation of its main provisions; an overall assessment of its

[1] Although the Chittagong Hill Tracts Accord uses the terms, *upajati* (literally sub-nation or sub-ethnic group) rather than "indigenous peoples", the present report uses "indigenous peoples" as this, and its Bengali equivalent, *adibashi*, is being increasingly used by indigenous peoples themselves and by the Government of Bangladesh, along with a large section of Bengali citizens and the media. It should also be noted that the term indigenous/adibashi has been used in a number of laws, enactments and programmes, including the Chittagong Hill Tracts Regulation of 1900, the Finance Act of 2010, the Small Ethnic Groups Cultural Institutes Act of 2010 and the poverty reduction strategy paper of 2010. The 11 indigenous groups are: Bawm, Chak, Chakma, Khumi, Khyang, Lushai, Marma, Mro, Pangkhua, Tanchangya and Tripura. A small number of migrants of indigenous origin (including Santal, Ahomia and Nepali-Gurkha) have also made the region their home since the British period (1860-1947) but their status as indigenous peoples is not recognized by law.

[2] Based on the 1991 census.

[3] The Rapporteur is also a member of the International Chittagong Hill Tracts Commission (http://www.chtcommission.org/).

implementation to date, including the effects on the situation in the region; and recommendations to relevant stakeholders.

II. Background to the signing of the Chittagong Hill Tracts Accord

5. Prior to British rule, the Chittagong Hill Tracts was governed by comparatively non-formalized self-governance systems, which were considered to be independent. British influence over the region took place in a gradual manner, and during the period of British influence, the area had the special status of an autonomously administered region, safeguarded by the Chittagong Hill Tracts Regulation of 1900, which, inter alia, strictly controlled the entry and residence of non-hill people and barred the sale and transfer of land to non-indigenous peoples.[4] During the British colonial period and during the early years of Pakistani rule, the Chittagong Hill Tracts was recognized as a specially administered area[5] under several constitutional dispensations, including the Government of India Act of 1919, the Government of India Act of 1935 and the constitutions of Pakistan of 1956 and 1962. In 1963, however, a constitutional amendment eliminated the special status and immigration restrictions. After Bangladesh became independent from Pakistan in 1971, the elements of indigenous peoples for regional autonomy and the restoration of the special constitutional safeguards were rejected when the first constitution of Bangladesh was adopted in 1972.

6. The rejection of constitutional recognition and many years of political, economic and social marginalization led the Shanti Bahini, the armed wing of the Parbatya Chattagram Jana Samhati Samiti, the indigenous political party, to initiate a low-intensity guerrilla war against the Government of Bangladesh in the early 1970s. The war intensified after 1975, when the founding leader, Bangabandhu Sheikh Mujibur Rahman, was assassinated by military personnel and a military regime took power in a coup d'état. As a counter-insurgency measure, a Government transmigration programme, carried out between 1979 and 1984, brought an estimated 400,000 Bengali settlers into the Chittagong Hill Tracts, an area which already had a scarcity of land following the construction of the Kaptai dam. The Kaptai dam, completed in 1963, inundated 40 per cent of the arable land in the region and displaced more than 100,000 indigenous peoples, many of whom took permanent refuge in India.

7. The transmigration programme drastically altered the demographic composition of the Chittagong Hill Tracts; the percentage of Bengalis in the region rose from 26 per cent in 1974 to 41 per cent in 1981 (in 1951 the Bengalis had accounted for only nine per cent of the population). In addition, Bengalis illegally occupied the lands of the indigenous peoples on a large scale. The indigenous population was forcefully relocated to "model villages" and the Bengalis who could not be accommodated on the land that the relocated or fleeing indigenous peoples left behind were settled in "cluster villages", usually next to a military camp where they served as a protective shield for the military. The forced relocation and illegal occupation of the lands of the indigenous peoples further escalated the conflict and

[4] The Chittagong Hill Tracts Regulation of 1900, which, after numerous amendments, remains in law today, forms the basis of the special legal and administrative system of the region.

[5] Referred to as "backward tract", "excluded area" or "tribal area".

this issue became one of the main sources of conflict between the indigenous peoples and Bengali settlers and the army.[6]

8. Successive Governments tried to solve this inherently political and ethnic problem through military means, and the Chittagong Hill Tracts became heavily militarized within a short period of time. It has been estimated that there were more than 500 army camps throughout the Chittagong Hill Tracts. In 1980, an estimated 30,000 regular and paramilitary troops were stationed in the region and the number of police stations doubled in the four years from 1976 to 1980.

9. In the wake of the insurgency and the ensuing militarization, there were widespread and systematic violations of the human rights of the indigenous inhabitants in the region, mainly perpetrated by Bangladesh security forces, including unlawful killings, detention without trial, torture, rape, destruction of houses and property and forcible occupation of their ancestral lands.[7] During the period of the insurgency, approximately 70,000 indigenous peoples fled to India and around 100,000 indigenous peoples became internally displaced.

10. This partly civil, partly military conflict continued up to the 1990s, and it was not until 1997 that the civil war formally ended with the signing of the Chittagong Hill Tracts Accord between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti on 2 December 1997. While the Accord was hailed by many as an historic agreement, a section of the indigenous population rejected it, arguing that the aspirations of the indigenous peoples, including the demand for full autonomy, had not been fulfilled. This group later formed the United People's Democratic Front, and a deep split in the indigenous movement was created. The then opposition party, the Bangladesh Nationalist Party (BNP), also rejected the Accord, arguing that it was a sell-out on the part of the Government to the rebels.

III. International framework

A. United Nations Declaration on the Rights of Indigenous Peoples

11. The peaceful resolution of conflicts is of vital importance in the process of protecting the rights of indigenous peoples. The preamble of the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 12 September 2007,[8] gives both a background to the past, present and emerging conflicts between indigenous peoples and States as well as directions on how such conflicts might be resolved. The Declaration contains articles of particular relevance to the Chittagong Hill Tracts Accord, thus providing a normative framework for its implementation. The effective participation of indigenous peoples is essential to the implementation of such agreements, including their engagement in the planning and formulation of plans, policies and laws.

---

[6] Jenneke Arens and Kirti Nishan Chakma, "Indigenous Struggle in the Chittagong Hill Tracts", in *Between Ashes and Hope: Chittagong Hill Tracts in the Blind Spot of Bangladesh Nationalism*, Naeem Mohaiemen, ed., Drishtipat Writers' Collective (Dhaka, 2010).

[7] See Amnesty International, http://amnesty.name/fr/library/asset.

[8] Bangladesh abstained from the voting on the adoption of the Declaration in the General Assembly in September 2007, but in August 2009, on the International Day of the World's Indigenous People, the Prime Minister of Bangladesh publicly stated the Government's support of the Declaration and asked for the support of all stakeholders in its implementation.

B. International Labour Organization Convention No. 107

12. Bangladesh has ratified several international human rights treaties, including the International Labour Organization (ILO) Convention on Indigenous and Tribal Populations of 1957 (Convention No. 107), the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

13. ILO Convention No. 107 remains a useful instrument, covering many areas that are of key importance to indigenous peoples. It should be mentioned, however, that although Bangladesh remains party to Convention No. 107, the provisions of ILO Convention No. 169 (the Indigenous and Tribal Peoples Convention) are also relevant to the situation in Bangladesh because of their inspirational value and because the Committee of Experts, which monitors the implementation of both Conventions No. 107 and 169, follows the progressive spirit of Convention No. 169 and rejects the integrationist orientation of Convention No. 107.[9]

C. Issues relating to the peaceful resolution of conflicts

14. Indigenous peoples often find themselves involved in conflicts with the dominant society, most often as a result of the loss of their lands, territories and resources or the deprivation of their civil, political, cultural, social and economic rights.[10]

15. As indigenous issues gained prominence in the United Nations system, the need for an international forum for conflict and dispute resolution for issues between indigenous peoples and States has become more critical. In December 2000, the Tebtebba Foundation, an indigenous organization based in the Philippines, convened the International Conference on Conflict Resolution, Peacebuilding, Sustainable Development and Indigenous Peoples. The outcome document, referred to as the Manila Declaration, contains detailed recommendations for peacebuilding, technical assistance, training in mediation and other approaches to conflict and recognizes the critical role that women play in peacebuilding in their communities. To date, those recommendations have not been implemented and there continues to be a need for conflict resolution mechanisms in the United Nations and at the national level.[10]

D. Violence and militarism

16. A recurring issue raised by indigenous peoples in United Nations forums has been the use of militarism to gain control over natural resources, including land, minerals and oil, without restitution or compensation. In nearly every region of the world where conflicts occur, indigenous peoples are being severely affected by violence and militarism. Militarism in indigenous territories presents a direct threat

---

[9] See Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107) and the Laws of Bangladesh: A Comparative Review*, International Labour Organization (Geneva, 2009).

[10] See Department of Economic and Social Affairs, *State of the World's Indigenous Peoples*, United Nations (New York, 2009).

to the lifestyle and survival of indigenous peoples and has significant effects on their communities. Militarism includes not only armed conflict but also rape, sexual harassment and violence, which are often employed by armed forces as a strategy to target women.

17. Another tactic employed by armed forces occupying indigenous territories is the destruction of the social fabric of indigenous communities through the assassination of the traditional authorities: deprived of leadership, the community is vulnerable to manipulation. Displacement is often another result of intensified military activity in indigenous territories. Displaced communities are left without food, shelter or protection and are often forced to migrate to cities or other areas.[10]

IV. Chittagong Hill Tracts Accord

18. The Chittagong Hill Tracts Accord contains four main parts:

(a) Part A, under the heading "General", recognizes the Chittagong Hill Tracts as a tribal inhabited region. It deals with commitments to pass legislation and sets out details of the composition of a committee to oversee the implementation of the Accord;

(b) Part B, entitled "Chittagong Hill Tracts Local Government Council/Hill District Council", details proposed legal amendments to strengthen the existing powers of the district councils and to extend their jurisdiction to include new subjects;

(c) Part C, entitled "Chittagong Hill Tracts Regional Council", lays down the composition of a new unit of regional authority to be constituted as a regional council incorporating the three districts of the area. In the case of both the regional and the district councils, the chairperson and two thirds of the seats are to be reserved for indigenous peoples;

(d) Part D, entitled "Rehabilitation, General amnesty and other matters", addresses a wide range of issues, including the rehabilitation of international refugees, internally displaced persons and indigenous fighters, and the granting of amnesty to the guerrillas and other people involved in the armed struggle. The issue of land and settlement of land disputes is mentioned both in part D and part B.

19. It is important to note that no time frame was developed for the implementation of the various provisions of the Accord and that no independent body overseeing its implementation was agreed upon.[11] The fact that the Accord is not protected by constitutional safeguards is also significant. This means, inter alia, that any Government disagreeing with the devolution of powers to the Chittagong Hill Tracts could, in theory, initiate legislation that has the effect of revoking the Accord or at least of diluting its provisions.

[11] In the case of the dismantling of military camps, a time schedule was to have been agreed upon, but this provision has been ignored.

V. Political commitment to the implementation of the Chittagong Hill Tracts Accord

20. After signing the Chittagong Hill Tracts Accord in 1997, the Awami League political party remained in power for four years, during which time some initiatives were taken to implement a few of the provisions. With its opposition to the Accord, the coalition led by the BNP (2001 to 2006) was more inclined to solve the problems in the region by military means. During this time human rights violations against indigenous peoples in the region were frequently reported. This situation continued during the state of emergency (2007-2008), although a few positive steps were taken, including holding a number of meetings of the different committees related to the implementation of the Accord.[12]

21. The current "Grand Alliance" Government, led by the Awami League, swept to power in a landslide election victory in late 2008 based on an election manifesto stating that:

> The 1997 Chittagong Hill Tracts Peace Accord will be fully implemented. More efforts will be directed toward the development of underdeveloped tribal areas, and special programmes on priority basis will be taken to secure their rights and to preserve their language, literature, culture and unique lifestyles.[13]

22. This pledge has been repeated in various national and international forums, including during the universal periodic review of Bangladesh conducted by the United Nations Human Rights Council in 2009.[14]

VI. Status of implementation of the main provisions of the Chittagong Hill Tracts Accord

23. Owing to limited space, it is not possible to provide a detailed account of the status of implementation of each provision of the Accord in the present study. A brief assessment of the extent to which some of the main provisions of the Accord have been implemented is provided below.

A. Tribal inhabited region

24. The need to preserve the characteristics of the Chittagong Hill Tracts as a tribal inhabited region is recognized in part A of the Accord. With the passage of legislative measures, such as the Chittagong Hill Tracts Regional Council Act and the Chittagong Hill Tracts Land Disputes Resolution Commission Act of 2001, and the continuing role of the traditional chiefs and headmen in the administration of the region, some steps have been taken to safeguard the special characteristics of the

---

[12] Ishtiaq Jamil and Pranab Kumar Panday, *The Elusive Peace Accord in the Chittagong Hill Tracts of Bangladesh and the Plight of the Indigenous People*, Commonwealth & Comparative Politics, vol. 46, No. 4, 2008.

[13] See http://www.albd.org/autoalbd/index.php?option=com_content&task=view&id=367&Itemid=1.

[14] A/HRC/11/18/Add.1.

area.[15] However, the continued migration of non-indigenous peoples from the plains into the region, the alienation of indigenous peoples' ancestral lands, the issuance of permanent residence certificates to Bengali settlers, the inclusion of Bengali settlers in the voter list and other developments clearly show that protecting the characteristics of the area as a tribal inhabited region has not been a genuine concern of the successive Governments. According to PCJSS there was an informal understanding between the Government and the party's negotiators that the settlers would eventually be relocated voluntarily. This never happened and the offer of the European Union to sponsor such a relocation process was turned down.

B. Legislation

25. The Chittagong Hill Tracts Accord refers to several measures on substantive legislation in the region, including the enactment of new laws and the amendment of existing laws, regulations and practices to comply with the Accord on the basis of advice and recommendations of the Chittagong Hill Tracts Regional Council. In line with this provision of the Accord, the Government passed the Chittagong Hill Tracts Regional Council Act of 1998, the Hill District Council (amendment) Act of 1998, the Chittagong Hill Tracts Land Disputes Resolution Commission Act of 2001 and the Chittagong Hill Tracts Regulation (amendment) Act of 2003. Although the process of legislation to advance the peace process is far from being realized, a number of laws have been passed. In comparison, however, the process of framing of rules and regulations has been stymied, including the regulations of the Chittagong Hill Tracts Regional Council.[15]

C. Accord Implementation Committee

26. The Accord stipulates that an implementation committee should be constituted with a mandate to monitor the implementation process. The members of the Committee are nominated by the Prime Minister, the Chairperson of the Task Force on Rehabilitation of Returnee Refugees and Internally Displaced Persons and the President of PCJSS. The Committee was first constituted in 1998 but its existence was not maintained after the BNP party came to power in 2001. The Committee, reconstituted by the current Government in May 2009, has held only a few meetings since that time.

D. Hill District Local Government Council/Hill District Council

27. The Hill District Council Acts of 1989 (Acts XIX, XX and XXI of 1989) established three identically empowered Councils at the district level, reserving two thirds of their seats and the office of the chairperson for tribals. The Councils were provided limited authority over 21 areas of jurisdiction, including primary education, health facilities, local police and approval over transfers of land.

---

[15] Raja Devasish Roy, "Implementation Status of the Chittagong Hill Tracts Accord of 1997", in *The Chittagong Hill Tracts: The Road to a Lasting Peace*, Victoria Tauli Corpuz et al. (eds.); Tebtebba Foundation (the Philippines, 2000).

28. The Hill District Council Acts were amended in 1998, in accordance with the provisions of the Accord, whereby the councils were provided more authority and autonomy than before through an increase in the number of subjects transferred to their authority, from 21 to 68 subjects in 33 areas of jurisdiction, and the enhancement of their authority over land administration, local police, forests, secondary education, budgets and other matters. Prior to the signing of the Accord, 15 subjects in 10 areas of jurisdiction were transferred to the Hill District Councils; only another 5 subjects in 3 areas have been transferred since 1998.[16] Clearly, many crucial matters have yet to come under the authority of the Councils.

29. The members of the Hill District Councils are to be elected by tribal and non-tribal permanent residents of the concerned districts. However, apart from the first and rather controversial election in 1989,[17] the Councils, until now, have been administered by Government appointees and no election has been held since the signing of the Accord. One of the issues in relation to the Hill District Council elections is the voter list. The Accord stipulates the preparation of a voter list comprising only the permanent residents of the three hill districts, that is, individuals having a specific address and legally valid ownership of land in the region. A voter list prepared prior to the 2001 parliamentary election, which included non-permanent Bengali settlers, was therefore rejected by PCJSS. Another matter is the issue of "permanent residents". Given that a large percentage of the Government-sponsored Bengali settlers of the region have land-record documents, and given the question of whether many of the titles held by the settlers are valid in the first place, there are fears that many Bengali settlers will once again be included if a new voter list is prepared. The issue of the voter list thus remains unresolved.

30. In addition, it is important to ensure that the relatively few voters from the smaller ethnic groups actually have a say in electing their candidates. In July 2010, the Government announced that it would conduct elections to the Hill District Councils and the Regional Council following the final decision of a court case on the unconstitutionality of the Chittagong Hill Tracts Regional Council Act of 1998 (see para. 32 below), taking into consideration a proposal under which voters would only vote for candidates from their own ethnic groups.[18]

E. Chittagong Hill Tracts Regional Council

31. The Accord provides for the establishment of a regional council. As in the case of the Hill District Councils, the office of the Chairperson and two thirds of its members are reserved for tribals. The members of the Council are to be indirectly elected by the members of the three Hill District Councils but since no elections for the Councils have been held, the current members are all Government appointees. The Chittagong Hill Tracts Regional Council has supervisory and coordinating authority over matters such as development activities, general administration, the Hill District Councils, local government councils, the Chittagong Hill Tracts Development Board and customary law and social justice. In addition, the Regional

[16] PCJSS, "The status of the Chittagong Hill Tracts Accord and the latest situation in the Chittagong Hill Tracts", 16 February 2009 (unpublished).

[17] See Chittagong Hill Tracts Commission, "Life is Not Ours": Land and Human Rights in the Chittagong Hill Tracts: Bangladesh (The Netherlands, 1991).

[18] *The Daily Jugantor*, Dhaka, 5 July 2010.

Council has the prerogative to advise the Government on legislation concerning the region. In practice, however, the Regional Council has not been able to play its role effectively.[19]

32. On 13 April 2010, the High Court of Bangladesh declared the Chittagong Hill Tracts Regional Council Act of 1998 unconstitutional and illegal in that it violated the sanctity of a unitary state. In its judgement, the High Court also declared a few sections of the three amended Hill District Council Acts of 1998 illegal and unconstitutional following the submission of a writ petition filed in 2000.[20] This includes the section that says that Bengali settlers have to obtain permanent residency certificates from the relevant traditional indigenous chief in the region, as well as the section that states that a non-indigenous person cannot vote in Council elections without having access to validly titled land and the provisions allowing reservation of class III and class IV positions in the Councils for indigenous peoples. The Government appealed the decision and the judgement was stayed by the Appellate Division of the Supreme Court pending hearing of the appeal.

F. Land

33. Land is widely recognized as the most critical issue in the Chittagong Hill Tracts where indigenous peoples have lost and are continuing to lose their ancestral lands at an alarming rate as a consequence of forceful eviction from and expropriation of their lands through development projects and occupation by the military. To address land-related problems, the Accord provides, inter alia, for the establishment of a Land Commission with a mandate to settle land disputes, including the authority to cancel leases of lands given to non-tribal and non-local people.

34. The first Chairperson of the Land Commission was appointed in 1999 but, in effect, the Commission remained inactive until July 2009 when its current Chairperson was appointed. In addition to disposing of land disputes by taking into account customary laws and local traditions and procedures, the Commission has the authority to annul the rights of ownership of lands that were granted illegally. The work of the Commission is guided by the Accord as well as the Chittagong Hill Tracts Land Disputes Resolution Commission Act of 2001. A number of provisions of the Act are contrary to the Accord, however, and not long after the Act was passed the Regional Council submitted a list of proposed amendments to the Government, including to the near-veto powers of the Commission's Chairperson and to address uncertainties regarding the extent of jurisdiction of the Commission over forest land and seasonally cultivable plough lands known as fringelands.[9] The issue of amendment of the Land Commission Act has been one of the factors hindering the proper functioning of the Commission; indigenous members have agreed not to start work until the discrepancies between the Act and the provisions of the Accord have been removed through legal amendments.

---

[19] PCJSS, Report on the Implementation of the Chittagong Hill Tracts Accord (Rangamati, 2004); Raja Devasish Roy, *The ILO Convention on Indigenous and Tribal Populations, 1957 (No. 107) and the Laws of Bangladesh: A Comparative Review*, ILO (Geneva, 2009).

[20] The High Court, however, rejected another writ petition, filed in 2007, which also declared the Accord illegal.

35. The work of the Land Commission's recent decisions, which were announced by the Chairperson without the consent of the Commission's indigenous members, have generated substantial criticism from indigenous peoples in the region and from civil society organizations. Firstly it was announced that a cadastral survey would be carried out in the region before the land disputes are settled. The announcement created apprehension that those currently occupying indigenous peoples' lands illegally would be recorded as the possessors and eventually as titled owners, while the displaced individuals and communities would be excluded from the survey records. After months of protests against the decision, the Government announced that the survey had been called off and that land ownership would be determined before a survey is conducted.

36. The Land Commission also made a call for the submission of complaints by affected parties, without obtaining the consent of the indigenous members of the Commission regarding the process for the hearing of such complaints. This has resulted in the submission of claims, mostly by Bengali settlers, who are typically occupying indigenous peoples' lands. Indigenous peoples and their major social and political organizations boycotted this controversial procedure. The Commission subsequently issued notices to indigenous peoples requesting their appearance before it; those failing to appear would risk having their cases be decided in their absence. As a result, there is grave misapprehension about large-scale loss of land rights of the indigenous peoples through this so-called legal mechanism.[21]

37. Regarding the cancellation of leases for rubber and other commercial plantations to non-tribal and non-local people, in cases where the lands have not been properly utilized for over 10 years, in July 2009 a parliamentary committee on affairs in the region recommended that the concerned leases be cancelled, including for over 45,000 acres of land in the three hill districts. By August 2009, leases of 8,175 acres of land had reportedly been cancelled while leases of another 15,000 acres are known to be awaiting immediate cancellation.[22] Many indigenous people feel that these reports are not based on fact, and that only a very few leases have actually been cancelled. In a few cases, some of the land has allegedly been leased out again rather than given back to its original owner.

38. A critical but highly sensitive issue in relation to the restitution of indigenous peoples' land in accordance with the provisions and intentions of the Accord and its preamble about safeguarding the special characteristics of the area as a tribal inhabited region is the voluntary relocation of Bengali settlers to areas outside the Chittagong Hill Tracts. Several suggestions for a relocation process that would protect the dignity of the settlers and facilitate their proper rehabilitation have been made[23] but there appears to be no visible initiative by the successive Governments to start such a process. In the past, the European Parliament is known to have offered its support for such a relocation.[17]

---

[21] Chittagong Hill Tracts Commission, *Memo to the Prime Minister on the Baghaihat/Khagrachari Incidents and Activities of the Land Commission* (2010).

[22] http://www.thedailystar.net/newDesign/latest_news.php?nid=18725.

[23] See Shapan Adnan, *Migration, Land Alienation and Ethnic Conflict: Causes of Poverty in the Chittagong Hill Tracts of Bangladesh*, Dhaka, Research and Advisory Services (2004); Chittagong Hill Tracts Commission, *The Chittagong Hill Tracts Commission concludes second mission, press release, February 2009*.

G. Demilitarization

39. The Accord stipulates that all temporary army camps, the Ansars (paramilitary forces) and the Village Defence Party, except the Bangladesh Rifles,[24] and six specified permanent army establishments or cantonments would be withdrawn in phases from the region to permanent cantonments and that a time limit would be fixed for this process. With the majority of human rights violations committed against indigenous peoples in the region being attributed to the extensive presence of security forces, and considering the military's influence on civil administration and development activities in the area, this provision is seen as crucial for re-establishing normalcy in the Chittagong Hill Tracts.

40. The PCJSS party estimates that the number of military camps withdrawn to date is around 74, out of more than 500 (temporary) military camps;[25] according to the Government, 200 camps[26] have so far been withdrawn in phases since the Accord was signed. It should be noted that the Government has failed to provide a list of the dismantled camps, despite several requests from PCJSS. The most recent dismantling of military camps took place in mid-2009 when 35 camps were closed down. Allegedly, however, some of these camps have been re-established or replaced by other armed forces. It should be noted that no time limit for the withdrawal of military camps has ever been announced.

H. Repatriation and rehabilitation of refugees and internally displaced persons

41. The Accord provides for both the repatriation and rehabilitation of the nearly 70,000 indigenous peoples who fled to the Indian state of Tripura during the insurgency period and the rehabilitation of over 100,000 internally displaced persons who were rendered homeless and destitute by the counter-insurgency operations, including transmigration and forced evictions.

42. In the case of the international refugees, the last repatriation exercise started in 1994 when the Government and indigenous refugee leaders signed a 16-point package agreement followed by a 20-point package agreement in 1997, which outlines the benefit package offered by the Government of Bangladesh to the tribal returnees from India.[27] The Accord provides for the continuation of the repatriation and rehabilitation of the refugees. The Task Force on Rehabilitation of Returnee Refugees and Internally Displaced Persons was expected to expedite the rehabilitation process; all the international refugees have now returned to the region. Most of the economic facilities stated in the 20-point package agreement, such as food rations and money for house-building materials and livestock, were provided to the refugees. However, about 9,700 families were unable to regain at least part of

[24] The Bangladesh Rifles, border security forces, were reconstituted as the Border Guard Bangladesh on 23 January 2011.

[25] See PCJSS, Report on the Implementation of the Chittagong Hill Tracts Accord (Rangamati, 2004); PCJSS, Report on Present Status of Implementation of the Chittagong Hill Tracts Accord and Overall Situation in the Chittagong Hill Tracts (February 2010, unpublished).

[26] http://www.thedailystar.net/newDesign/news-details.php?nid=100422.

[27] There were other groups of tribal returnees before that date, including the few thousand who returned from Mizoram state in 1983-1984 based on oral understandings but without written agreements.

their original homes and lands as these had been occupied by Bengali settlers or the military; these refugees have become dependent on food rations from the Government. A number of other clauses in the agreement have also not been fully implemented, including providing loan exemptions, returning Government jobs to civil servants and shifting schools and markets to their original location.[28]

43. While the repatriation and rehabilitation of the international refugees has been largely, but not fully, carried out, no practical steps have been taken to rehabilitate the internally displaced persons. One of the major obstacles to their rehabilitation is disagreement over who qualifies as an internally displaced person. In 2000, the Task Force on Refugees and Internally Displaced Persons compiled a list, identifying 90,208 indigenous families and 38,156 Bengali families as internally displaced families and recommending a package programme to resolve the situation. The inclusion of Bengali settlers who were brought into the region under the transmigration programme carried out between 1979 and 1984 in the list was denounced by PCJSS and the Jumma Refugees Welfare Association, which boycotted subsequent meetings of the Task Force. According to PCJSS, the Task Force unanimously decided, at a meeting in 1998, that only tribal people would be considered as internally displaced persons.[29] In 2009, the Task Force was reconstituted but the definition of an internally displaced person is still unresolved and, consequently, this clause of the Accord remains substantially unimplemented.

I. Ministry of Chittagong Hill Tracts Affairs

44. In order to deal with all major administrative and developmental matters related to the Chittagong Hill Tracts, the establishment of a separate ministry for regional affairs, headed by an indigenous person and advised by an advisory committee, was included in the Accord, and the Ministry was formally established in 1998. An indigenous member of Parliament was appointed as Minister with cabinet rank and the Advisory Committee was formed.[30] However, in the successive Governments since that time, the direct responsibility of the Ministry has been kept under the control of the Prime Minister and almost all officers in the Ministry are non-indigenous persons. The indigenous ministers for Chittagong Hill Tracts affairs have since had the status of a Deputy Minister or Minister of State, but have not, until recently, been assigned the rank of full cabinet minister. Furthermore, there have been incidents where the Ministry does not seem to be working in the interest of the indigenous population of the region. In January 2010, for example, the Ministry issued a controversial letter to the different Government authorities in the region directing them not to use the word "adibashi" but rather "upajati".[1]

[28] PCJSS, Report on the Implementation of the Chittagong Hill Tracts Accord (Rangamati, 2004).

[29] PCJSS, Report on Present Status of Implementation of the Chittagong Hill Tracts Accord and Overall Situation in the Chittagong Hill Tracts (February 2010, unpublished).

[30] There was no advisory committee during the tenure of the BNP-led Government (2001-2006).

VII. Assessment of the implementation status of the Chittagong Hill Tracts Accord and the effects on the situation in the region

45. Thirteen years after the signing of the Accord it is clear that many critical clauses remain unimplemented or only partially addressed, particularly those aimed at activating and empowering the civil administration, including the indigenous-majority councils and the traditional administration of the chiefs (rajas), headmen and *karbaries*, resolving land disputes and restituting to the indigenous peoples their illegally occupied lands. Hence, there is still a long way to go before the intention of the Accord, that is the establishment of a regional system of self-government and the preservation of the area as a "tribal inhabited region", is achieved. Renewed expectations for substantive progress in the implementation of the Accord were raised when the current Government came to power with an election manifesto pledging to fully implement the Accord within its tenure, which ends in 2013. However, despite national and international obligations as well as continued assurances about the Government's intentions, most of the crucial provisions of the Accord have still not been properly implemented.

46. The reason for non-implementation of the Accord reaches beyond the political party now running the Government. The region remains heavily militarized and there have been continued and consistent allegations that the army is interfering in civilian affairs in the region. "Operation Uttoron" (upliftment), allegedly a counter-insurgency programme, gives concentrated powers to military officials, although no insurgency has been recorded in the area since the ceasefires of the early 1990s. In the current political, social and economic setting of Bangladesh, the army is one of the most powerful institutions, often beyond public criticism or scrutiny, including by the Supreme Court of Bangladesh. Needless to say, with its pervasive power and influence over Bangladeshi society in general and the Chittagong Hill Tracts in particular, the army continues to oppose any substantive progress on the implementation of the Accord.

47. Bangladesh is a fractured country in many respects. There seems to be hardly any unanimity among the major political parties. The BNP party has been critical of the Accord from the very beginning and has never hesitated to use the subject of the Chittagong Hill Tracts to reap electoral benefits nationally. Given the potentially adverse electoral outcomes, and with little or no support from the main opposition party, the Awami League has little incentive to push for the Accord's implementation. In addition, Bangladesh is a heavily centralized State, with most of the key decisions being dictated by Dhaka. This puts the bureaucracy in a particularly difficult position vis-à-vis its ability to influence the Government's decision-making and policy implementation processes.

48. The lack of substantial progress is leading to an increasing sense of frustration and disillusionment among the indigenous peoples in the region. Adding fuel to the dwindling faith in the Government's sincere intent or political ability to fully implement the Accord are developments and initiatives that violate or go against the spirit of the Accord.

49. Other types of gross human rights violations, committed primarily against the indigenous population, also continue to be reported and seem to demonstrate a consistent pattern of human rights violations in the region. Violations include

arbitrary arrests, torture, extrajudicial killings, harassment of rights activists and sexual harassment. In most cases such violations are carried out with impunity.[31] Escalating communal tensions and incidents of violence between the indigenous peoples and settler community in the region give further cause for concern. A recent incident of intercommunal violence in February 2010 in Baghaihat and Khagrachari resulted in the burning down of nearly 500 homesteads, most of which belonged to indigenous peoples, and the killing of at least three individuals. Strong allegations of the direct involvement of army personnel in the attacks on indigenous peoples' homes have been put forward.[32] Despite consistent national and international pressure on the Government to initiate an independent and impartial inquiry, no such process has been instituted to date.

50. Although it is difficult to verify the exact number of troops currently deployed in the Chittagong Hill Tracts, military officials attest to the fact that one third of the army is deployed in the region, an area which accounts for one tenth of the total territory of the country. This is an excessive amount, by any standard, especially in a country that is not participating in a war, is at peace with its neighbours and has no prevailing insurgency situation.

51. Internal conflicts within regional indigenous political groups and between indigenous peoples and Bengali settlers have become a pretext for the continued military stronghold on the region and the delayed implementation of the Accord. Hence, rather than a diminishing of the powers of the military in the region in accordance with the Accord through the full activation and devolution of powers to the local civil administration and region-specific institutions, as well as the removal of all temporary military camps, there has been a further strengthening of the control of the military. This includes the retention of "Operation Uttoron", which is an executive order conferring rights on the military to intervene in civil matters beyond their proper jurisdiction. Furthermore, adding to the concern over strengthened military control, there is a continued role of the military in development activities such as road-building and the distribution of food rations under the so-called pacification programme as well as a recent unofficial proposal from the Armed Forces Division of the Prime Minister's office to establish a strategic management forum. The forum would have a significant presence of military and intelligence officials[33] and its major responsibilities would be to formulate integrated initiatives, policymaking decisions and an action plan for all issues related to the Chittagong Hill Tracts.[18]

---

[31] See Kapaeeng Foundation, *Human Rights Report 2007-2008 on Indigenous Peoples in Bangladesh* (Dhaka, 2009); International Work Group for Indigenous Affairs, *The Indigenous World 2010* (Copenhagen, 2010).

[32] See Chittagong Hill Tracts Commission, Memo to the Prime Minister on the Baghaihat/Khagrachari incidents and activities of the Land Commission (2010); Amnesty International, Bangladesh: Investigate army's alleged involvement in human rights abuses in Chittagong Hill Tracts, press release (February 2010).

[33] It has been proposed to include representatives from the Armed Forces Division, National Security Intelligence, the Directorate General of Forces Intelligence and Army Headquarters as well as high-ranking representatives of the 24 Infantry Division, Bangladesh Army, stationed in the greater Chittagong area in the membership of the forum.

VIII. Recommendations

52. The continuing failure to adequately implement all the provisions of the Chittagong Hill Tracts Accord in a timely manner and to address developments that lead to further marginalization of the indigenous peoples is likely to enhance the prospects of renewed political instability and ethnic conflict in the region. The likelihood of such outcomes is evident from the occurrence of conflicts between settlers and indigenous peoples and violence in the post-Accord period. It is, therefore, of utmost importance that there be no further delay in the implementation of the Accord. To that end, the following recommendations to relevant stakeholders should be implemented, with the active participation of the indigenous peoples of the Chittagong Hill Tracts:

Government of Bangladesh

53. **It is recommended that the Government of Bangladesh:**

(a) **Declare a timeline for implementation of all provisions of the Chittagong Hill Tracts Accord during the remaining period of its term, outlining modalities of implementation and persons and/or institutions responsible for implementation, in consultation with the Chittagong Hill Tracts Accord Implementation Committee;**

(b) **Facilitate the expedient settlement of land disputes by the Land Commission through the immediate amendment of the Land Dispute Settlement Commission Act of 2001, in accordance with the provisions of the Accord and the recommendations put forward by the Chittagong Hill Tracts Regional Council;**

(c) **Implement a phased withdrawal of temporary military camps in the region in accordance with the Accord in order to reduce the extent of undue military control and resultant tensions and thereby restore normalcy in the region;**

(d) **Transfer functions normally performed by civilian agencies but now undertaken by the military, such as development projects and any other activities not requiring specific military skills, to the civil administration and to institutions set up under the Accord. Instructions should be issued, with accompanying sanctions, against military involvement in the resolution of land disputes, the maintenance of normal law and order, including check posts on roads and waterways and forest produce checkpoints, and other typical civilian activities. The Government of Bangladesh is further requested to consider the removal of unnecessary check posts and unreasonable restrictions on the activities of non-governmental organizations and foreigners;**

(e) **Hand over all the agreed subjects and functions, as specified in the Accord, to the Hill District Councils, with immediate effect, and take all necessary steps to ensure the full functioning of the Chittagong Hill Tracts Regional Council in its role in coordination and supervision of the general administration and development of the region and in advising the Government on legislation;**

(f) **Address the issue of impunity for human rights violations in the region by arranging for a high-level, independent and impartial commission of**

enquiry into acts of violence perpetrated against indigenous peoples that implicate the army and other law enforcement agencies, and, where sufficient evidence exists, bringing those responsible to trial and providing exemplary punishment to the perpetrators and reparations to the victims concerned;

(g) Establish legal services in the region and develop an effective public information and education programme so that victims and witnesses of human rights violations and crimes, in particular violence against women, are able to access legal remedies;

(h) Allow United Nations agencies, international, national and local human rights institutions and groups, including the international watchdog body, the Chittagong Hill Tracts Commission, non-governmental organizations, the press and the media, free and easy access to travel within the region, including Baghaihat and other parts of Sajek union, Baghaichari subdistrict, Rangamati district, to investigate and report on allegations of human rights violations in the region, and to continue to monitor the situation unhindered and without surveillance;

(i) Invite the United Nations Special Rapporteur on the rights of indigenous peoples and other thematic special rapporteurs to assess the situation in the region;

(j) Include provisions in the Constitution of Bangladesh during its expected amendment, giving explicit recognition to the distinctive identity, culture and rights of the indigenous peoples along with ancillary safeguard provisions;

(k) Formally endorse the United Nations Declaration on the Rights of Indigenous Peoples, ratify ILO Convention No. 169 of 1989 and the optional protocol to the International Covenant on Civil and Political Rights and withdraw the reservations concerning certain provisions of the Convention on the Elimination of All Forms of Discrimination against Women.

Other stakeholders

54. The Human Rights Commission of Bangladesh: Investigate alleged violations of the rights of indigenous peoples and other residents of the Chittagong Hill Tracts and publish the findings of such enquiries, along with recommendations.

55. The Office of the United Nations High Commissioner for Human Rights and international and national donors, non-governmental organizations and human rights organizations: Provide financial means and technical assistance to indigenous peoples from the Chittagong Hill Tracts to engage with intergovernmental human rights and environmental treaty bodies in relation to treaties ratified by or acceded to by Bangladesh, including ILO Convention No. 107, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change.

56. Department of Peacekeeping Operations of the Secretariat: Develop a mechanism to strictly monitor and screen the human rights records of national army personnel prior to allowing them to participate in peacekeeping operations under the auspices of the United Nations.

57. International donor agencies in Bangladesh: Act on their commitments to support the implementation of the Chittagong Hill Tracts Accord and to ensure development respecting political, economic, social and cultural rights of indigenous peoples with the aim of promoting and protecting human rights in the region, including a strategic approach allowing for immediate as well as long-term development action.

Permanent Forum on Indigenous Issues

58. It is recommended that the Permanent Forum on Indigenous Issues:

(a) Recommend that the Department of Peacekeeping Operations prevent human rights violators and alleged human rights violators within the security forces of Bangladesh from participating in international peacekeeping activities under the auspices of the United Nations. The Permanent Forum should reiterate its recommendations to the Department of Peacekeeping Operations made at its fifth session (see E/2006/43, para. 87);

(b) Recommend that the United Nations Development Programme (UNDP) continue its activities in Baghaihat and other places in Sajek union, Baghaichari subdistrict, Rangamati district and other relevant places in the Chittagong Hill Tracts, addressing, in particular, the education, health-care and livelihood needs of internally displaced indigenous peoples. The Forum should encourage UNDP to report to it on its work in the Chittagong Hill Tracts;

(c) Recommend that the United Nations Children's Fund (UNICEF) conduct activities on education and health care in Baghaihat and other places in Sajek union, Baghaichari subdistrict, Rangamati district, and other relevant places in the Chittagong Hill Tracts in order to address, in particular, the needs of internally displaced indigenous peoples who remain unrehabilitated and their basic needs unaddressed from the time of the signing of the Accord in 1997 to the present. The Forum should encourage UNICEF to report to the Forum on its work in the Chittagong Hill Tracts;

(d) Conduct more in-depth case and comparative studies on peace accords, with an emphasis on issues such as reasons, factors and conditions leading to the success or failure of peace accords and the impact of armed conflicts on indigenous peoples, with particular emphasis on the situation of women and children;

(e) Dedicate the special theme of its twelfth session in 2013, or a technical seminar, to peacebuilding processes, the implementation of peace agreements and conflict-prevention initiatives in indigenous peoples' territories.